

# **Introductory Local Law Number 2 Of 2011**

## **County Of Ulster**

### **A Local Law Amending Local Law Number 9 of 1991 Ulster County Solid Waste Management Law**

**BE IT ENACTED**, by the County Legislature of the County of Ulster, New York, as follows:

#### **ULSTER COUNTY SOLID WASTE MANAGEMENT LAW**

- Section 1.**     **Short Title.**
- Section 2.**     **Findings and Legislative Intent.**
- Section 3.**     **Statutory Authority.**
- Section 4.**     **Definitions.**
- Section 5.**     **Administration.**
- Section 6.**     **Rules and Regulations.**
- Section 7.**     **Hauler Licensing Requirements.**
- Section 8.**     **Revocation or Denial of Licenses.**
- Section 9.**     **Flow Control.**
- Section 10.**    **Priority.**
- Section 11.**    **Severability.**
- Section 12.**    **Effective Date.**

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### **Section 1. Short Title.**

This local law shall be known as the “Ulster County Solid Waste Management Law.”

### **Section 2. Findings and Legislative Purpose**

The Ulster County Legislature finds that:

- (a) In 1991, the County of Ulster and the Ulster County Resource Recovery Agency (hereinafter the Agency) prepared a Local Solid Waste Management Plan pursuant to the provisions of Environmental Conservation Law §27-0106 and §27-0107 in order to define the County’s policies with respect to solid waste management. It is the policy of the County, in accordance with the solid waste management policies of the State of New York, to reduce the amount of solid waste generated; reuse material for the purpose for which it was originally intend or recycle material that cannot be reused; recover energy from solid waste that cannot be economically or technically reused or recycled; and dispose of solid waste that is not being reused, recycled or from which energy is not being recovered by land burial or other means approved by law. This local law is intended to advance and support the policies expressed in the Local Solid Waste Management Plan.
- (b) The Agency’s mission is to provide an efficient, economical and environmentally sound solid waste management system in and for the County of Ulster. The Agency strives to carry out the principles of New York’s solid waste hierarchy in its work, emphasizing reuse of materials, reduction of MSW, and the carrying out of an effective and user friendly recycling program, with landfill disposal of MSW that cannot be reused, reduced or recycled. The Agency also provides yard waste composting and holds Household Hazardous Waste and Electronics recycling events for the residents of the County. Municipal drop off centers for disposal of solid waste and recycling developed by the Agency offer County residents a convenient alternative to private collection contracts. The Agency routinely negotiates contracts with area solid waste collection firms for disposal of MSW at its two conveniently placed transfer stations, and long hauls through private contractors the processed waste to permitted landfills in New York State.
- (c) Together with the preparation of the Local Solid Waste Management Plan, the County adopted Local Law Number 8 of 1991 (the Ulster County Mandatory Source Separation and Recycling Law) and Local Law Number 9 of 1991 (the Ulster County Solid Waste Management Law) with the intent that the provisions of each law should complement the other in the management of solid waste and recyclables collection and disposal in the County.

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- (d) Section 4 of Local Law Number 9 of 1991 provided for the restriction of competition in solid waste disposal to the extent that waste generated or brought within the County of Ulster could be directed to a solid waste facility designated by the Agency, as authorized by Public Authorities Law § 2050-t(3). Enforcement of section 4 of Local Law Number 9 of 1991 was suspended following judicial decisions calling similar provisions in the laws of other communities into question on constitutional grounds. In 2007, the United States Supreme Court affirmed the power of local government to direct the flow of solid waste and recyclables to public facilities, and this amendment to Local Law Number 9 of 1991 is adopted to advance the goals of the Ulster County Local Solid Waste Management Plan in a manner conforming to the standards established by the Court.
- (e) Local Law Number 8 of 1991 (the Ulster County Mandatory Source Separation and Recycling Law) has been amended on two occasions: by Local Law No. 8 of 2007 and Local Law No 4 of 2010. The most recent amendment set forth in Local Law No 4 of 2010 sets forth Findings and Legislative Purposes with respect to County policy on recycling and solid waste management which the Legislature hereby re-affirms and adopts as additional Findings and Purposes for this amendment.
- (f) In addition, the Legislature finds that the establishment of a requirement for an occupational license for persons engaged in the collection of solid waste and recyclables in Ulster County, together with the re-institution of flow control over the disposal of solid waste generated within the County will assist the County and the Agency in fulfilling the goals of the Local Solid Waste Management Plan. The license and flow control requirements established herein are intended to enhance the ability of the Agency to gather information relevant to the generation, type and quantity of waste and recyclables in the County; assist in the environmentally sound and economical disposal of solid waste; provide sufficient user revenue to the Agency to administer the operation of an integrated solid waste management system; reduce the subsidy provided by Ulster County taxpayers to the solid waste system; and assist the County and the Agency in the enforcement of environmental laws and regulations.
- (g) The Legislature further finds that the amendments contained herein will assist the Agency in establishing a uniform disposal fee for all haulers operating within the County and thereby encourage competition among haulers, for the benefit of all consumers of solid waste services within the County.

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### Section 3. Statutory Authority

This local law is adopted pursuant to Section 120-aa of the General Municipal Law, Section 10 of the Municipal Home Rule Law, Section 2050-t(3) of the Public Authorities Law, and Article 27 of the Environmental Conservation Law.

### Section 4. Definitions

As used in this local law, the following terms shall have the following meanings:

**“Agency”** shall mean the Ulster County Resource Recovery Agency created under Chapter 936 of the Laws of 1986 of the State, as amended.

**“Agency Executive Director”** shall mean the Executive Director of the Ulster County Resource Recovery Agency.

**“Collection”** shall mean the pick-up, collection or delivery of solid waste to a Hauler at the point of generation.

**“Construction and Demolition Debris” or “C&D”** shall mean uncontaminated solid waste resulting from the construction, remodeling, repair and demolition of utilities, structures and roads; and uncontaminated solid waste resulting from land clearing. Such waste includes, but is not limited to bricks, concrete and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, nonasbestos insulation, roofing shingles and other roof coverings, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, empty buckets ten gallons or less in size and having no more than one inch of residue remaining on the bottom, electrical wiring and components containing no hazardous liquids, and pipe and metals that are incidental to any of the above.

**“County”** shall mean the entire County of Ulster as constituted and existing under the Laws of the State.

**“Disposal”** shall mean the post-collection delivery of solid waste to any location for processing, transfer, transportation, or any permanent disposition.

**“Generator”** shall mean any person or legal entity that produces solid waste including regulated recyclable materials requiring off-site disposal.

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**“Hauler”** shall mean any person engaged in the business or activity of collecting, storing, and transporting Solid Waste, including Recyclable Materials.

**“Independent Administrative Hearing Officer”** shall have the meaning set forth in section 20 of Local Law No 4. of 2010.

**“Municipality”** shall mean any county, city, town, village, improvement district, public authority, or other municipal corporation established by law.

**“Municipal Solid Waste” or “MSW”** shall mean that Solid Waste which is generated at residences, institutions, businesses, or other properties, exclusive of construction and demolition debris and source separated recyclables.

**“Person”** shall mean any natural person, individual, partnership, co-partnership, association, owner or manager of a business, commercial or industrial establishment, joint venture, corporation, trust, estate, institution, not-for-profit organization or any other legal entity including a municipality or any other waste generator.

**“Recyclable Materials”** shall mean any solid waste that exhibits the potential to be returned to the economic resource stream in the form of raw materials to be used in place of virgin materials in the manufacture of new products.

**“Solid Waste”** shall mean all materials or substances discarded or rejected within the County of Ulster as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including, but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous materials, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, source, special nuclear or by-product material within the meaning of the Atomic Energy Act of 1954, as amended, and waste which appears on the list of hazardous waste promulgated by the Commissioner of Environmental Conservation pursuant to Section 27-0903 of the Environmental Conservation Law.

**“Solid Waste Management Facility”** shall mean any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture or other real or personal property which is to be used, occupied or employed for or is incidental to the collecting, receiving, transporting, storage, processing or disposal of solid waste as more fully defined in Public Authorities Law Section 2050-b(16).

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### **Section 5. Administration**

This local law shall be put into effect, administered, and enforced by the Agency. In order to carry out this responsibility, the Agency, acting consistently with the purposes of this local law, shall be empowered to do the following:

- (a) Establish, revise, amend, and repeal rules and regulations as it shall deem reasonable, necessary and proper to carry out the responsibilities and requirements of this local law pursuant to Section 5.
- (b) Designate Solid Waste Management Facilities within Ulster County which may receive, process, transfer, transport or dispose of solid waste.
- (c) Issue summonses, notices and administrative complaints to persons in violation of the provisions of this Local Law, adjudicate alleged violations, impose civil penalties and license suspensions and/or revocations as provided herein, and take all lawful action to enforce the provisions of this local law, including but not limited to applications to courts of competent jurisdiction.

### **Section 6. Rules and Regulations**

When specified in this local law, the Agency may, from time to time, promulgate rules and regulations consistent with the provisions of this local law in order to effectuate the purposes hereof. The procedure for rule making shall be the procedure set forth in section 6 of Local Law Number 4 of 2010 (the Ulster County Mandatory Source Separation and Recycling Law).

### **Section 7. Hauler Licensing Requirements**

- (a) No Hauler shall collect, transport or dispose of Solid Waste and/or Recyclables generated within the County without obtaining a Hauler License issued by the Agency. Licenses issued pursuant to this local law shall be in the nature of a privilege subject to the terms and conditions set forth in this local law and shall not be deemed to create a property interest with respect to the License in the holder thereof.
- (b) The Agency shall be authorized to issue a Hauler License to qualified applicants upon submission of a written application containing such information as may be required by the Agency for administrative purposes, including, but not limited to, the following:
  - 1. The name and address of the applicant, specifying, in the case of any corporation, the names and addresses of each officer and director thereof.

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2. If the applicant conducts business under a trade name or if the applicant is a partnership, the application for a license must be accompanied by a copy of the trade name or partnership certificate duly certified by the Clerk of the county in whose office the certificate was filed.
  3. The experience of the applicant in the business of collection and disposal of refuse and similar material.
  4. The number of collection vehicles to be operated by the applicant and a description of each such vehicle, including the ownership of the vehicle, the make, year, model of chassis and body type, the cubic capacity or tare weight, and color of vehicle, the current New York State registration number, and the community or communities in which the vehicle will operate. All vehicles shall be marked with the name of the licensee. The Agency shall be authorized to issue identification numbers for each vehicle, to be marked or affixed thereto.
  5. The number and location of all waste or recyclables containers distributed by the licensee to customers within the County. All such containers shall be marked with the name of the licensee. The Agency shall be authorized to issue identification numbers for each such container, to be marked or affixed thereto.
  6. The location of any and all terminals proposed to be used by the applicant for the storage of licensed vehicles.
  7. Applicant's proposed daily route and pickup schedule for each area and building to be serviced. Within thirty (30) days of occurrence, any changes in the daily route and pickup schedule shall be reported, in writing, to the Agency. This subdivision shall not apply to such routes and special districts as are provided for by contract with a Municipality.
  8. The name, address and telephone number, both day and night, of the applicant or the person in charge of the business.
  9. A listing of the present customers serviced by the applicant or licensee.
  10. Any other relevant information the Agency may require.
- (c) Additional requisites for obtaining and holding a license.

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1. Fees. Each application shall be accompanied by an application fee of \$200 plus \$100 for each vehicle to be used by the licensee in the provision of service in the County.
  2. Insurance. Before a license may be issued by the Agency, each applicant shall file with the Agency proof of the following insurance coverage, consisting of a certificate of the insurance carrier:
    - i. Workmen's compensation insurance.
    - ii. Disability benefits insurance.
    - iii. Public liability insurance with minimum limits of one hundred thousand dollars (\$100,000.) for each person injured and three hundred thousand dollars (\$300,000.) for each accident.
    - iv. Property damage insurance in the sum of fifty thousand dollars (\$50,000.).
  3. Duty to keep records. Every licensee shall keep complete and accurate books of account with respect to the operation of his business, in which shall be entered and shall show, among other things, all income derived or received from each of his customers and/or other sources, together with details of all expenses disbursements made or incurred in the operation of his business. Such books of account shall be kept current on a monthly or quarterly basis and brought up-to-date not later than thirty (30) days after the expiration of such period. All such records shall be retained by the licensee for at least three (3) years.
  4. Right of inspection. The Agency shall have the right to inspect books of account and records maintained by the licensee.
  5. Global Positioning System. Each licensee may be required to install and maintain equipment to be identified by the Agency for the tracking of collection vehicles by satellite or other means. If the Agency determines that it is necessary to install a GPS system, then in that event, the Agency shall give the licensee thirty (30) days notice prior to the date of required installation of the GPS system. It shall be the responsibility of the licensee to bear the cost of the GPS system.
- (d) Term of License. Each license issued pursuant to this section shall be valid for a term expiring on December 31 of the year of issuance. License renewals shall be considered in the same manner and subject to the same conditions as original applications.



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- (e) Licenses Not Transferable. Licenses issued pursuant to this local law shall not be transferable or assignable by the licensee. Changes in ownership or control of a licensed entity shall be reported to the Agency within 10 days.

#### **Section 8. Revocation or Denial of Licenses**

- (a) The Agency shall be authorized to deny an application or suspend or revoke a hauler license issued pursuant to this local law where one (1) or more of the following situations is found to exist:
1. That the applicant or licensee has failed and refused, without reasonable cause, to collect and dispose of garbage and rubbish, except in a situation where a contract has been lawfully terminated.
  2. That the applicant or licensee has failed to account or pay, without reasonable cause, any disposal bills to the Agency.
  3. That the applicant or licensee has failed to reasonably fulfill his obligations as a private refuse collector to a customer.
  4. That the applicant or licensee is insolvent or has made a general assignment for the benefit of creditors or has been adjudged a bankrupt, or a money judgment has been secured against him upon which an execution has been returned wholly or partly unsatisfied.
  5. That the applicant or licensee has failed to keep and maintain records or has refused to allow the inspection thereof as otherwise provided in this local law.
  6. That the applicant or licensee has violated any of the provisions of this local law or the provisions of Local Law No. 4 of 2010.
  7. That the applicant or licensee has ceased to operate as a private refuse collector for which a license was previously issued.
  8. That the applicant or license holder has been convicted of a felony or misdemeanor which in the judgment of the Agency renders such person unfit or undesirable to hold such license.

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- (b) Procedure. Whenever, in the judgment of the Executive Director of the Agency, sufficient evidence exists to support a determination that a license held by any person should be suspended or revoked, or that civil penalties should be imposed pursuant to this local law, the Agency shall serve written notice of such suspension or revocation, and/or the amount of civil penalty imposed, upon the licensee, together with notice of the effective date of such suspension, revocation or penalty, which date shall be not less than twenty (20) days from the date of such notice. Written notice of suspension or revocation of a permit shall be served personally or by certified mail, return receipt requested, addressed to such person's last-known address; and if by certified mail, a copy of the notice shall be posted on the licensee's premises as stated in the license application. Such notice shall contain factual allegations sufficient to inform the license holder of the nature and circumstances of the violation charged, and shall further inform the license holder of the right to a hearing to contest the suspension, revocation and/or penalty. The license holder may invoke the right to a hearing by serving a written demand for hearing upon the Agency at any time prior to the effective date of the suspension, revocation or penalty, and service of such demand shall serve to stay such suspension, revocation or penalty pending the determination of the Independent Administrative Hearing Officer, pursuant to the procedures set forth in section 20 of Local Law No 4. Of 2010. Any person aggrieved by the denial of a license after application pursuant to this section may request the Agency for a hearing on such denial.
- (c) Nothing herein shall prevent the Agency from enforcement of the provisions of this local law, and all rules, regulations, orders and determinations made pursuant thereto, by actions or proceedings for legal and/or equitable relief, brought in the name of the Agency or the County in any court of competent jurisdiction.

#### **Section 9. Flow Control**

- (a) All Municipal Solid Waste generated within the County of Ulster shall be delivered for disposal to a Solid Waste Management Facility designated by the Agency. The County hereby intends to regulate and control the collection, transportation and disposal of all Municipal Solid Waste, by whomever collected, within the towns and municipalities within the County and to authorize the Agency to establish standards and promulgate regulations to accomplish such control. The Agency's designation may include a determination that a particular Solid Waste Management Facility shall be the only facility used for the disposal of Municipal Solid Waste generated within all of, or a described area within, the County of Ulster or by a particular person or persons.
- (b) In administrative proceedings under Local Law No. 4 of 2010 to enforce the provisions of this section there shall be rebuttable evidentiary presumptions that:

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1. The placement of a solid waste container that is marked or identified with the name of any person holding or required to hold a license for the collection of solid waste pursuant to this local law at any location within the County shall be presumptive evidence that such person is providing solid waste collection service at said location.
  2. Evidence of Municipal Solid Waste in a container located in the County as described in sub-section (1) above, and subsequent observation of the same Container empty, shall be presumptive evidence that Solid Waste was collected from the container by the person whose name is marked on the container.
  3. The failure to deliver any Municipal Solid Waste to an Agency Solid Waste Management Facility within three days of the collection of Municipal Solid Waste from any location within the County shall be presumptive evidence of a violation of this section.
- (c) Penalties. Any person who violates any of the provisions of this section 9 of this local law, or who fails to perform any duty imposed by this local law or any rule or regulations promulgated pursuant thereto, may be liable for a civil penalty not to exceed \$5,000 and/or revocation of all licenses issued pursuant to this local law.

#### **Section 10. Priority.**

Pursuant to Title 13-G of the Public Authorities Law of the State, this local law takes precedence over and shall supersede any inconsistent provisions of any local law enacted by any municipality within the County.

#### **Section 11. Severability.**

If any section, provision, or part thereof, in this local law, or the application thereof to any person or circumstances, is adjudged invalid or unconstitutional by a court of competent jurisdiction, then such adjudication shall not affect the validity of the remainder of the local law or the validity of the local law as a whole or any sections, provision or part thereof, not so adjudged invalid or unconstitutional and the application of the local law or any section, provision or part thereof to other persons or circumstances shall not be affected by said adjudication.

#### **Section 12. Effective Date.**

This law shall take effect upon filing with the Secretary of State.